REMARKS

The claims are 1-4, 6, 7, 8 and 10-24. Claims 1, 3, 7, 14, 16, 18, 21 and 22 have been amended. Claims 1, 3, 7, 14, 16, 18, 21 and 22 are in independent form. Favorable reconsideration and allowance of the subject application are respectfully requested in view of the following comments.

Claims 1, 3, 7, 14, 16, 18, 21 and 22 have been amended by changing the carbohydrate range to about 15 to about 45 g and amending the list of fortification components to vitamins, minerals, and combinations thereof. Support for the amendments can be found, for example, in paragraph [0041] on page 12 of the specification. Accordingly, no new matter has been added.

Initially, Applicants would like to thank the Examiner for the kind courtesy of the interview conducted on March 23, 2006.

Claims 1-8, 10-13 and 18-22 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 4,055,669 ("*Kelly*") in view of U.S. Patent No. 6,592,915 ("*Froseth*") and a recipe for Pfeffernusse found in the book titled, Joy of Cooking ("*Rombauer*"), on page 708. Claims 14-17 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Rombauer*. Claims 23 and 24 stand rejected as allegedly obvious over the art cited above further in view of U.S. Patent No. 3,615,590 ("*Avera*"). Applicants respectfully traverse these rejections, in view of the comments set forth below.

An energy bar, as defined by the present claims, has about 15 to about 45 g of carbohydrates, about 1 to about 4.5 g of fortification components, about 8 to about 40 g of protein, about 3 to about 8 g of fat, about 150 to about 300 calories, and a moisture content of less than about 15% by weight, based on a 55 g serving size.

As noted in the First Declaration under 37 C.F.R. § 1.132 of Edward L. Rapp, energy bars are a specific segment of the food category designed to provide significant levels of nutrients such as protein and fortification components in a low fat and low calorie bar. To make clear that the presently claimed invention is directed to the energy bar segment, all the claims of this invention recite that definition. Moreover, all the claims have been amended to make clear that the energy bar fortification components are selected from the group consisting of vitamins, minerals and combinations thereof. Thus, energy bars as recited in the present claims require a significant amount of vitamins and/or minerals. Simply adding these components to a food product would not result in a good tasting energy bar since there are significant taste problems that need to be overcome. (See First Declaration of Edward L. Rapp, paragraphs 4, 8 and 15).

The present invention discloses a good tasting energy bar that delivers nutrients within defined carbohydrate, fortification component, protein, fat, calorie and moisture ranges. To ensure a superior tasting product, the energy bar recited in independent claims 1, 3, 21 and 22 must have a hedonic score for consumer acceptability of at least 5.2 as well as the high level of protein and fortification components. The chewy energy bar recited in claim 7 requires a mean hedonic score of at least 4.9. This hedonic score is lower because it is believed to be more difficult to achieve good taste in a chewy matrix than in a grain based matrix. None of the cited art suggests the good tasting highly fortified energy bars of this invention, nor that such taste could be achieved by controlling one or more of: (i) temperature and shear; (ii) particle size of the protein and (iii) blending a fat-carbohydrate matrix with a base energy food matrix.

Kelly discloses a food composition made of cereal particles and a binder. The binder includes a protein source coated with an edible fat. *Kelley* contains too much fat to be considered an energy bar as defined by the present claims.

Froseth discloses a layered cereal bar having identifiable ready to eat cereal pieces and at least one visible filling layer. *Froseth* does not contain the amount of fortification components required in an energy bar as defined in the present claims.

Rombauer is cited for disclosing a recipe for Pfeffernusse, which the Office Action alleges, is "an energy matrix made of corn syrup which is combined with a solid component which is grated lemon rind, which is mixed into a fat-carbohydrate matrix, which is butter and sugar (page 708)." See Office Action, p. 5, last paragraph. *Rombauer* does contain the protein required in an energy bar as defined by the present claims.

The differences between the claim recited energy bars and *Kelly*, *Froseth*, and *Rombauer* are set forth in detail in the First Declaration of Edward L. Rapp. The compositions of *Kelly* were determined to have a minimum of 11 g of fat, which exceeds the required amount set forth in the present claims of about 3 to about 8 g of fat, based on a 55 g serving size. (First Declaration of Edward L. Rapp, paragraph 10). The composition of *Froseth* has only 0.66 g of a fortification component, which is below the range of about 1 to about 4.5 g of fortification components. (First Declaration of Edward L. Rapp, paragraph 11). And, the Pfeffernusse composition of *Rombauer* has a protein content of approximately 4.6 g, which is substantially below the protein range of about 8 to about 40 g of protein, as set forth in claim 1. Moreover, the Pfeffernusse composition does not contain fortification components. Therefore, the requirement of about 1 to about 4.5 g of fortification components set forth in claim 1, would exclude the Pfeffernusse composition from being considered an energy bar. (First Declaration of Edward L. Rapp, paragraph 12). Clearly, the compositions of *Kelly*, *Froseth*, and *Rombauer* do not qualify as energy bars as defined by the present claims.

As such, Applicants respectfully submit that *Kelly*, *Froseth*, and *Rombauer*,

whether taken alone or in any permissible combination, do not disclose or suggest the presently claimed invention of an energy bar that provides about 15 to about 45 g of carbohydrates, about 1 to about 4.5 g of fortification components selected from the group of vitamins, minerals and combinations thereof, about 8 to about 40 g of protein, about 3 to about 8 g of fat, about 150 to about 300 calories, and a moisture content of less than about 15% by weight, based on a 55 g serving size, as set forth in the present claims.

As noted in the First Declaration of Edward L. Rapp, good tasting energy bars having the high protein and fortification components were not easily developed. In fact, Mr. Rapp spent about 5 years working on the development of the presently claimed energy bars (see First Declaration of Edward L. Rapp, paragraph 4, 7 and 15). While the negative taste of protein and fortification components are typically masked by the use of a significant amount of fat and carbohydrate, this strategy is not available in an energy bar. (See First Declaration of Edward L. Rapp, paragraph 18). The inventors, however, after years of work have solved this problem using the techniques described and claimed within the present application.

In that regard, the present claims include independent product by process claim 14 and method claims 16 and 18. These claims include the steps of (a) processing process sensitive ingredients in a manner to preserve the integrity of the process sensitive ingredients by controlling the temperature and/or shear energy imparted on the process sensitive ingredients; (b) including a fat-carbohydrate matrix with an energy bar matrix; and/or (c) using protein powders that have a particle size distribution such that at least about 30 wt.% of the protein powder has a mean particle size of at least about 35 microns to produce the energy bars of this invention.

As noted above, neither *Kelly*, *Froseth*, nor *Rombauer* teach or suggest the energy bar of the present invention which provides about 15 to about 45 g of carbohydrates, about 1 to

about 4.5 g of fortification components selected from vitamins, minerals and combinations thereof, about 8 to about 40 g of protein, about 3 to about 8 g of fat, about 150 to about 300 calories, and a moisture content of less than about 15% by weight, based on a 55 g serving size. Moreover, *Kelly*, *Froseth*, and *Rombauer* do not teach or suggest the techniques set forth in (a), (b) and/or (c) as a means for improving the taste of an energy bar. As such, the method claims of this invention are clearly patentable over *Kelly*, *Froseth*, or *Rombauer* whether taken alone or in combination.

As noted above, claim 14 is a product by process claim and claim 16 is a method claim. The Examiner has alleged that these claims are anticipated by *Rombauer*. First it is noted these two claims also include the definition of an energy bar as set forth above. As such, claims 14 and 16 simply cannot be anticipated by the Pfeffernusse composition of *Rombauer,* since the Pfeffernusse composition does not meet the meet the requirements of an energy bar as set forth in claims 14 and 16.

In particular, the Pfeffernusse composition of *Rombauer* does not include the fortification components required in the present claims. Anticipation requires that each and every element of the claimed invention be described by a single prior art reference. That requirement is clearly not met by *Rombauer* and accordingly claims 14 to 17 are not anticipated by *Rombauer*.

Claim 21 is an energy bar which includes the feature of an energy bar matrix combined with a fat-carbohydrate matrix in a weight ratio of about 99:1 to about 80:20. The energy bar matrix is comprised of a solid component selected from the group consisting of corn starch, oat, rice, wheat, barley, cereal, grains, sorghum, protein, salt, flavors, cocoa powder, flour, fortification components, sugars, and combinations thereof, and a carbohydrate based

syrup selected from the group consisting of corn syrups, liquid sucrose, honey, high fructose corn syrup, glycerin, and combinations thereof. The fat-carbohydrate matrix is comprised of about 2 wt.% to about 25 wt.% of one or more fat components selected from the group consisting of chocolate, peanut butter, fat substitutes, vegetable fats, tropical fats, animal fats and combinations thereof, and about 10 wt. % to about 75 wt. % of one or more carbohydrate components selected from the group consisting of starch, sugar, gels, syrups, honey, molasses, and combinations thereof. As with the other claims, the fortification components are vitamins, minerals and combinations thereof.

Applicants respectfully submit, that *Kelly*, *Froseth*, and *Rombauer*, whether taken alone or in any permissible combination, do not disclose or suggest the above noted features of claim 21. As such, claim 21 is patentable over the above references.

Claim 22 includes the same specified components that define an energy bar as the other claims, as well as the feature of a protein powder, where at least 30 wt. % of the protein powder has a mean particle size of at least about 35 microns. Nothing has been found in *Kelly*, *Froseth*, and *Rombauer*, that would teach or suggest the claim recited energy bar, let alone using a protein powder having the particle size distribution set forth in claim 22. As such, claim 22 is patentable over *Kelly*, *Froseth*, and *Rombauer* whether taken alone or in any permissible combination.

The Examiner has alleged that claims 23 and 24 are obvious in view of *Kelly*, *Froseth* and *Rombauer* further in view of *Avera*. *Avera* is directed to a high fat melt butter gel. Clearly *Avera* is not relevant to the energy bar of the defined claims. Accordingly, the deficiencies of *Kelly*, *Froseth*, *Rombauer* are not remedied by *Avera*.

As explained in the Preliminary Amendment dated November 17, 2005, even if a prima facie case were deemed to have been established, it is respectfully submitted that the secondary considerations of long felt need and commercial success would clearly overcome any such prima facie case deemed established. These secondary considerations are discussed by Edward L. Rapp, Technology Vice President, at Masterfoods USA in the accompanying Second Declaration under 37 C.F.R. § 1.132. Mr. Rapp is one of the named inventors of the present application. In his declaration, Mr. Rapp points out how the energy bar market has grown, and how existing products have not satisfied consumer desire for good taste while having a healthy composition.

Applicants' invention provides a process to meet the long felt need of consumers, i.e., a good tasting energy bar. In the present invention, this is achieved by carefully combining ingredients and incorporating one or more of the following processing steps (a) mixing the fortification component with the homogeneous base energy food matrix in a manner to preserve the integrity of the fortification components by controlling the temperature and/or shear energy imparted on the fortification components; (b) including a fat-carbohydrate matrix with an energy bar matrix; and (c) using protein powders that have a particle size distribution such that at least about 30 wt.% of the protein powder has a mean particle size of at least about 35 microns. The resulting product has a superior taste, texture, and appearance that consumers want.

This is evidenced by the success of the commercial embodiments of Applicants' invention, sold under the brand name SNICKERS MARATHON®. Based upon the sales velocity (a measurement of how quickly a product moves off the shelf), SNICKERS MARATHON® energy bars have exceeded expectations. Further evidence of commercial

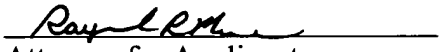
success is seen by the number of awards won by SNICKERS MARATHON®, which exceeds dozens of awards.

The success of SNICKERS MARATHON® energy bars has a clear nexus to the process of the present invention, which provides a means of achieving an energy bar having outstanding taste. (See Second Declaration of Edward L. Rapp, paragraph 14).

Accordingly, in view of the secondary considerations of long felt need and commercial success, Applicants respectfully submit that any prima facie case of obviousness deemed established by the Examiner has clearly been overcome. Therefore, Applicants respectfully request favorable reconsideration and early passage to issue of the presently claimed invention.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



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